



July 7, 1999

Ms. Camila W. Kunau
Assistant City Attorney
City of San Antonio
P.O. Box 839966
San Antonio, Texas 78283-3966

OR99-1888

Dear Ms. Kunau:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 125540.

The City of San Antonio (the "city") received two requests for information that SATRANS Joint Venture ("SATRANS") submitted to the city in its successful bid for the operation of an airport shuttle concession. You contend that release of a portion of the responsive information implicates the interest of the third party, SATRANS, and is excepted from disclosure under section 552.110 of the Government Code. You have supplied correspondence from an attorney with a law firm that formerly represented SATRANS. This attorney identifies information he contends is excepted from disclosure by section 552.110 of the Government Code and provides argument in support of that contention. We construe your request to incorporate this argument. You have supplied the responsive information to our office for review. We have considered the exception raised and reviewed the submitted information.

Pursuant to section 552.305 of the Government Code, this office informed SATRANS Joint Venture of the request and provided it the opportunity to claim the exceptions to disclosure of the requested information, together with argument in support of those exceptions. *See* Gov't Code § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); Open Records Decision No. 542 (1990) (determining that statutory predecessor to Government Code section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exceptions in certain circumstances). The letter from this office requested SATRANS response within 14 days of receipt of the notice. SATRANS did not respond. Therefore, we shall consider only the section 552.110 arguments incorporated into your request.

Section 552.110 protects the property interests of those supplying information to governmental entities by excepting from disclosure two types of information: (1) trade secrets, and (2) commercial or financial information obtained from a person and privileged or confidential by statute or judicial decision. Our office previously applied the test articulated in *National Parks and Conservation Association v. Morton*, 498 F.2d 765 (D.C. Cir. 1974) to hold that information could be withheld under the “commercial or financial information” branch of section 552.110 if release of the information is likely to either (1) impair the government’s ability to obtain necessary information in the future or (2) cause substantial harm to the competitive position of the person from whom the information was obtained. Open Records Decision No. 639 (1996). Your argument relies solely on this holding as grounds for excepting information under the “commercial or financial information” branch of section 552.110. However, the rationale of Open Records Decision No. 639 was expressly rejected by the Third Court of Appeals, which recently held that *National Parks* is not a judicial decision within the meaning of section 552.110. *Birnbaum v. Alliance of Am. Insurers*, 1999 WL 314976 (Tex. App.--Austin May 20, 1999, no pet. h.). As neither the city nor SATRANS Joint Venture has cited a statute or judicial decision that expressly holds the subject information to be privileged or confidential, and we are aware of none, the subject information may not be withheld under the “commercial or financial information” branch of section 552.110.

Former counsel for SATRANS also argue that certain responsive information is excepted under the “trade secrets” branch of section 552.110. The Texas Supreme Court has adopted the definition of “trade secret” from the Restatement of Torts, section 757, which holds a “trade secret” to be:

any formula, pattern, device or compilation of information which is used in one’s business, and which gives him an opportunity to obtain an advantage over competitors who do not know or use it. It may be a formula for a chemical compound, a process of manufacturing, treating or preserving materials, a pattern for a machine or other device, or a list of customers. It differs from other secret information in a business . . . in that it is not simply information as to a single or ephemeral event in the conduct of the business A trade secret is a process or device for continuous use in the operation of the business. . . . [It may] relate to the sale of goods or to other operations in the business, such as a code for determining discounts, rebates or other concessions in a price list or catalogue, or a list of specialized customers, or a method of bookkeeping or other office management

Restatement of Torts § 757 cmt. b (1939); see *Hyde Corp. v. Huffines*, 314 S.W.2d 763, 776 (Tex.), cert. denied, 358 U.S. 898 (1958).

The following criteria determines if information constitutes a trade secret:

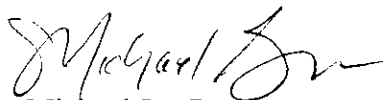
(1) the extent to which the information is known outside of [the company]; (2) the extent to which it is known by employees and others involved in [the company's] business; (3) the extent of measures taken by [the company] to guard the secrecy of the information; (4) the value of the information to [the company] and [its] competitors; (5) the amount of effort or money expended by [the company] in developing the information; (6) the ease or difficulty with which the information could be properly acquired or duplicated by others.

RESTATEMENT OF TORTS, *supra*; see also Open Records Decision Nos. 319 at 2 (1982), 306 at 2 (1982), 255 at 2 (1980).

This office will accept a claim that information is excepted from disclosure under the "trade secret" aspect of section 552.110 if a *prima facie* case is made that the information is a trade secret and no argument is submitted that rebuts that claim as a matter of law. Open Records Decision No. 552 at 5 (1990); see Open Records Decision No. 542 (1990) (governmental body may rely on third party to show why information is excepted from disclosure). In this case, the former counsel for SATRANS states, without elaboration, that his client has "taken great measures" at "great cost" to develop certain subject information for use in its business, and that the information would be "of great value to our client's competitors." We are not of the opinion that the argument presented establishes a *prima facie* case that the information is a trade secret. Therefore, no information may be withheld under the "trade secret" branch of section 552.110 of the Government Code.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Sincerely,



Michael Jay Burns
Assistant Attorney General
Open Records Division

MJB/ch

Ref: ID# 125540

Encl. Submitted documents

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